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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 24, 2016

10:06 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

1
2 (CC: Doc# 9491, 9493) Final Hearing RE: Motion Pursuant to Fed.
3 R. Bankr. P.7023 and 9019 for an Order: (I) Preliminarily
4 Approving the Class Action Settlement with Respect to
5 Plaintiffs Bankruptcy Proofs of Claim, (II) Certifying the
6 Settlement Class and Appointing Class Representatives and Class
7 Counsel for Purposes of the Settlement, (III) Approving the
8 Form and Manner of Notice to the Class,(IV) Scheduling a
9 Fairness Hearing, and (V) Appointing a Settlement
10 Administration.

11
12 (CC: Doc# 9867, 9866) Motion to Approve, and Incorporated
13 Memorandum of Law, of the Rothstein Plaintiffs (Claim Nos. 4074
14 and 3966) In Support of Motion for Final Approval of Proposed
15 Class Action Settlement and Plan of Allocation. (related
16 document(s)9866)

17
18 (CC: Doc# 9868, 9866) Motion to Allow, and Incorporated
19 Memorandum of Law of Class Counsel for the Rothstein Plaintiffs
20 (Claim Nos. 474 and 3966), In Support of Award of Attorneys'
21 Fees and Reimbursement of Litigation Expenses, and for
22 Incentive Awards for the Named Plaintiffs.

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RESIDENTIAL CAPITAL, LLC, ET AL.

5

1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. We're here
3 in Residential Capital, number 12-12020. I'll get the
4 appearances, please.

5 MR. STRAUSS: Mark Strauss, Kirby McInerney, on behalf
6 of Landon Rothstein, et al., the claimants-plaintiffs in this
7 proposed class action settlement. We're on for final approval
8 this morning.

9 THE COURT: All right. Let me get the rest of the
10 appearances.

11 MR. STRAUSS: I'm sorry?

12 MR. ROSENBAUM: Norm Rosenbaum, Morrison & Foerster
13 for the ResCap Borrower Claims Trust.

14 THE COURT: All right. Thank you very much.
15 Go ahead, Mr. Strauss.

16 MR. STRAUSS: Good morning, Your Honor. We have a
17 proposed class action settlement and fee application. We're on
18 final approval. We've sent out 143,000 post-card notices to
19 class members at their addresses. So far we have not received
20 any objections. We thought it wise to go through with the
21 hearing rather than file a CNO, because there's always the
22 possibility that --

23 THE COURT: I wouldn't go forward on something of this
24 magnitude with a CNO anyway. So that --

25 MR. STRAUSS: Okay.

1 THE COURT: -- we're here.

2 MR. STRAUSS: I don't think there's anybody -- any
3 class members who showed up to object. So we have no
4 objections, either to the settlement or to the fee application.
5 And we have 8 opt-outs out of the 143,000 members of the class.

6 The settlement and fee request are clearly fair and
7 reasonable and merit approval. As I mentioned, there are no
8 objections and only eight opt-outs. We think it's an excellent
9 result. We've got an allowed claim of thirteen million. Under
10 the anticipated claims rate for Class GS-5 claims, that's going
11 to translate to 3.9 million for the class of cash. And that's
12 a -- the face amount of the claim, the thirteen million, is
13 equal to approximately twenty-five percent of the out-of-pocket
14 loss that we estimate the class suffered.

15 This is an excellent result particularly in light of
16 the fact that the Second Circuit dismissed the claims that we
17 pled against GMAC's co-defendants in the district court.

18 THE COURT: I was surprised -- a little surprised that
19 you acknowledged so forthrightly in your declaration that the
20 Second Circuit's Rothstein decision -- you didn't quite say it
21 this strongly -- but likely would have led to dismissal of your
22 claim.

23 MR. STRAUSS: Well, that highlights the extreme risks
24 that we had in this case. And in fact, while we were
25 negotiating the settlement, the motion to dismiss in the

1 district court was pending. And it was likely that -- it was a
2 possibility --

3 THE COURT: Right.

4 MR. STRAUSS: -- that the district court would have
5 ruled against us the same way that the Second Circuit
6 ultimately did. And that would have basically put an end to
7 our proof of claim. So we were sort of racing against the
8 clock and trying to get a good settlement before a decision
9 came out.

10 As so happened, we got a favorable decision three
11 weeks after we reached our settlement-in-principle. And then
12 ultimately it was reversed by the Second Circuit. The Second
13 Circuit decision was a shock to us. We were pretty confident
14 going into there that we were going to win. The --

15 THE COURT: I'm just curious. Do you have other
16 similar cases pending, or did you --

17 MR. STRAUSS: We have another similar case right now,
18 yes.

19 THE COURT: In this circuit or --

20 MR. STRAUSS: No, it's in the Eleventh Circuit. And I
21 think the facts there are even more egregious than they were in
22 the GMAC case. So I think that we have a tolerable -- a better
23 chance, I think, down there. That case involves actual cash
24 kickbacks as opposed --

25 THE COURT: As opposed to the free services?

1 MR. STRAUSS: Correct. Correct. Cash and securities.

2 We do want to note that there were three other LPI-
3 related -- LPI being lender-placed-insurance, for the record --
4 class actions that were filed with respect to GMAC: the
5 Ulbrich, Cronk, and Throm cases; and those cases, there was no
6 recovery for the class in the bankruptcy. I think two of the
7 named plaintiffs got some nominal amount of money to resolve
8 their individual claim, but they recovered nothing.

9 They didn't pursue the kinds of strategies that we
10 pursued by filing claims in the district court against the Ally
11 defendants, Ally Financial and Ally Bank, based upon alter ego
12 and veil piercing theories, in order to put us in a better
13 strategic position to get a settlement in the bankruptcy.

14 Notably, class members don't have to do anything.
15 We've done all the work ahead of time. We got the data from
16 GMAC, and we identified all class members and determined their
17 recognized losses. We expect to send out 61,000 --
18 approximately 61,000 checks.

19 The reason why only 61,000 and there's 143,000 in the
20 class, is because we're not going to send checks to anybody who
21 would get less than ten dollars, because those checks don't get
22 cashed. So we're going to gross-up those amounts under ten
23 dollars to the other folks, and they will get -- they will get
24 paid.

25 As for the fee application, we worked on a

1 contingency. We haven't been paid anything yet. We started
2 this case, as I mentioned, in the district court and litigated
3 in parallel in the district court and this court for some time.
4 We're asking for a thirty-five percent fee, which we submit is
5 in line with similar settlements. And we've cited a number of
6 cases at pages 6 to 7 of our brief in support of that. And we
7 also think that it satisfies the Goldberg factors.

8 As I mentioned, there were no objections.

9 THE COURT: I guess -- this was ninety-three percent
10 of the lodestar?

11 MR. STRAUSS: Yes. And it's a -- what they say a
12 negative multiplier, only ninety-three percent of the lodestar.
13 Correct, Your Honor. Usually in class actions, counsel gets a
14 multiplier -- a high positive multiplier. For example, in the
15 Kessler settlement in this court -- in this bankruptcy, the
16 Court gave a thirty-five percent fee, and that yielded them a
17 multiplier of 2.93. So we submit that in light of that, the
18 percentage that we're requesting is eminently reasonable.

19 We're asking for expenses in the amount of 226,938
20 dollars. Again, no objections have been received to that. The
21 bulk of that --

22 THE COURT: Was your expert?

23 MR. STRAUSS: It was our expert, yes. And we want to
24 point out, Judge, that we -- we incurred that expenses up front
25 here in order to make sure that we could assure the greatest

1 possible participation in the settlement. It's very common in
2 a regular settlement, where there are -- where there's a claims
3 process, that the settlement administrator incurs at least that
4 amount of money or more processing claims. So we spent that
5 money up front.

6 And then we have 20,000 dollars for our data-hosting
7 provider. We had eight gigabytes -- over eight gigabytes of
8 information. We had to host that on a professional's computer
9 system, because we couldn't put it on our own. And then 36,000
10 in Westlaw expenses. So we think that the expenses are
11 proportionate and reasonable and well-documented as we've
12 submitted.

13 We've also asked for incentive awards of 2,500 dollars
14 each for --

15 THE COURT: For each of the three, right.

16 MR. STRAUSS: Four actually.

17 THE COURT: Four, okay, sorry.

18 MR. STRAUSS: Four plaintiffs.

19 THE COURT: Yes, I saw that.

20 MR. STRAUSS: That's all right. So subject to any
21 questions that the Court may have, we wanted to thank the
22 liquidating trustee for their help as well in getting this
23 settlement effectuated.

24 THE COURT: Okay. All right, Mr. Rosenbaum, do you
25 want to be heard?

1 MR. ROSENBAUM: I have nothing to add, Your Honor. We
2 support the application and obviously support the settlement.

3 I would add that this was an agreement-in-principle
4 reached prior to confirmation, so we were committed to it and
5 we saw it through.

6 THE COURT: Thank you very much. Okay.

7 I am going to approve the settlement and the fee
8 application. A few comments about it.

9 On February 9th, 2016, the Court entered an order
10 granting preliminary approval of the settlement, certifying the
11 settlement class -- as I said, granting preliminary approval.
12 That preliminary approval order is at ECF 9609.

13 What is a little unusual here is the Second Circuit
14 decision in Rothstein v. Balboa Insurance Company, which is at
15 794 F.3d 256 (2d Cir. 2015) -- it's a July 22, 2015 opinion --
16 as Mr. Strauss indicated, the agreement-in-principle to settle
17 this class action was reached before the District Court Judge
18 Nathan initially denied the motion to dismiss that Balboa had
19 filed. She certified it for direct review to the Circuit, and
20 the Circuit took the appeal and as I indicated, in July 2015
21 rendered its decision.

22 The Court in particular has reviewed carefully the
23 declaration of Mark A. Strauss in support of final approval of
24 proposed Rothstein settlement, et cetera. It's at ECF docket
25 9866.

1 And it really sets out in quite a comprehensive
2 fashion, the history of the litigation, the proceeding as to
3 Bal -- well, originally, against GMAC, but then once the
4 bankruptcy was filed, GMAC was dropped from the amended
5 complaint, and the proof of claim was filed in the bankruptcy,
6 and that's what's been settled here.

7 As I indicated, Judge Nathan had initially --
8 recognizing that there was a split in authority -- had denied
9 the motion to dismiss, certified it for direct appeal. Judge
10 Jacobs wrote the opinion for the Circuit. And at 794 F.3d 261,
11 Judge Jacobs' opinion indicates: "When GMAC filed for Chapter
12 11 bankruptcy a month later, plaintiffs withdrew their suit as
13 to GMAC and filed claims in bankruptcy. Plaintiffs and GMAC
14 later reached a settlement in principle resolving claims
15 against GMAC (and certain affiliates) in exchange for a
16 thirteen-million-dollar unsecured claim in favor of plaintiffs
17 and the putative class in the bankruptcy. Only the claims
18 against Balboa and Newport" -- Newport was an affiliate of
19 Balboa -- "are at issue in this appeal."

20 And so while the Second Circuit's opinion would have
21 created a very, very high hurdle if the claim against the
22 debtors had proceeded, it's not entirely clear to me that the
23 Second Circuit's decision would have been dispositive here.
24 And litigating the contested claim here would have been --
25 clearly would have been quite expensive. I mean, one of the --

1 what's clear from the Second Circuit opinion is certainly as to
2 the insurer Balboa, the filed rate doctrine precluded any
3 challenge to the rates that it charged and the alleged -- it
4 was alleged as a kickback. I think Judge Jacobs rejects the
5 use of that term "kickbacks", but he refers to the free
6 services.

7 I suppose one question is, in my mind -- I don't think
8 it's dispositive of the approval -- if GMAC had performed the
9 services itself rather than have Balboa or its affiliate do it,
10 could GMAC have obtained reimbursement from the borrowers or
11 the trusts for the cost of those services that actually were
12 performed without fee from the Balboa affiliate.

13 Whether there was some theory on which whether it was
14 a precise theory pleaded in the claim -- and I guess what --
15 there were two amended complaints, Mr. Strauss, in the --

16 MR. STRAUSS: Correct.

17 THE COURT: Whether it was the theory that was set
18 forth in either of the amended complaints as to the non-
19 insurer, whether there's a theory on which the plaintiffs could
20 have sought damages from GMAC for the value of the services it
21 received, really is, I guess, left for another court for
22 another day.

23 In any event, when I granted preliminary approval of
24 the settlement, February 2016, I was certainly well aware of
25 the Second Circuit's Rothstein decision at that time. And I

1 had no hesitancy or qualms about giving preliminary approval to
2 the settlement at that time. It had been negotiated in good
3 faith before the district court decision denying the motion to
4 dismiss, certainly before the Second Circuit reversed and
5 ordered the claims against Balboa to be dismissed.

6 As Mr. Strauss indicated, there've been no objections
7 filed to granting final approval or to the request for fees and
8 expenses.

9 As I commented earlier, the papers -- Mr. Strauss'
10 declaration -- forthrightly acknowledges the difficulties that
11 the Second Circuit's decision would have presented, but one
12 shouldn't go back and second-guess a settlement reached in good
13 faith, as it was here. The Second Circuit was certainly aware,
14 as I quoted earlier from Judge Jacobs' opinion, that a
15 settlement had been reached in principle here.

16 The Court has considered each of the factors
17 appropriate for consideration in determining whether to give
18 final approval of the settlement, both for certification of the
19 class and for the usual 9019 settlement standards. Since no
20 objections have been filed I will not go through each of the
21 factors, other than to say I've considered each to the extent
22 applicable in the circumstances.

23 As Mr. Strauss commented, there have been no
24 objections, only 8 opt-outs out of a class of approximately
25 143,000. The result under these circumstances is an excellent

1 result, in my view, and I think it's both in the best interests
2 of the plaintiff class but also a resolution when it was
3 reached, I think, was important to the debtors in being able to
4 propose, consummate, and get approval for its plan.

5 With respect to the fee application, the supporting
6 papers include detailed time records for time spent by
7 plaintiffs' counsel in prosecuting the class action. The
8 plaintiffs, as is typical and is required, and I guess they
9 indicate that 2,487 hours were spent in connection with the
10 investigation, prosecution, and resolution of the bankruptcy
11 proofs of claim, any investigation or prosecution of the claims
12 against GMAC and Ally in the Rothstein action.

13 Applying the lodestar, that would have resulted in an
14 indicated fee of 1,464,942 dollars. Assuming that the class
15 GS-5 claim yields a thirty-cent-per-dollar recovery, as
16 estimated by the plan, the requested fee is thirty-five percent
17 of the settlement funds that's being set up and significantly
18 less than plaintiffs' counsel's lodestar.

19 The amount of the fees being sought here are a fee
20 award of 1,365,000, which is approximately ninety-three percent
21 of the lodestar figure.

22 In addition, counsel seeks reimbursement of a total of
23 \$226,938.29 in expenses that were actually incurred on behalf
24 of the plaintiffs in the class. Of that amount, \$157,285.04 is
25 the amount for plaintiffs' forensic accounting expert, and

1 20,573 dollars with respect to plaintiffs' database hosting
2 provider. And included in the expense reimbursement request is
3 \$36,808.77 for reimbursement of cost of online computerized
4 research.

5 The notice to the class members apprised the class
6 that counsel, class counsel, would be seeking reimbursement of
7 litigation expenses in the approximate amount of 250,000
8 dollars, and has already indicated there were no objections
9 either to approval of the settlement or the application for
10 fees. In addition, as Mr. Strauss has indicated, the
11 plaintiffs' counsel seeks what's described as service awards in
12 the amount of 2,500 dollars for each of the four named
13 plaintiffs: Landon Rothstein, Jennifer Davidson, Robert
14 Davidson, and Ihor Kobryn, K-O-B-R-Y-N.

15 Having reviewed the detailed time records, the fee
16 application is fair, reasonable, and appropriate in the
17 circumstances. So is the request for expense reimbursement,
18 and, likewise, for the 2,500 dollars for each of the four named
19 plaintiffs.

20 So the settlement is approved, and the fees are
21 approved.

22 I'll need a disc with the orders to do that.

23 MR. STRAUSS: Right. We'll --

24 THE COURT: Okay. Anything else?

25 UNIDENTIFIED SPEAKER: We don't have them.

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 MR. STRAUSS: Thank you very much, Your Honor. We'll
2 provide a disc or an e-mail with the proposed order with all
3 the information filled in for you later on today.

4 THE COURT: Okay. Thanks very much.

5 MR. STRAUSS: Okay. Thank you very much.

6 MR. ROSENBAUM: Thank you, Your Honor. There's
7 nothing else on the agenda for this morning.

8 THE COURT: Thanks very much, Mr. Rosenbaum.

9 (Whereupon these proceedings were concluded at 10:27 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

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New York, NY 10040

Date: May 25, 2016

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